Before the
Federal Communications Commission
Washington, D.C. 20554

In the matter of	)	
	)	
Federal-State Joint Board on	)	CC Docket No. 96-45
Universal Service	)	

REPLY COMMENTS OF

THE WYOMING PUBLIC SERVICE COMMISSION

Filed April 25, 2002

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SUMMARY

The Commission must stay focused on its mandate to preserve and advance universal service. It must assure that the federal high cost mechanism for non-rural providers allows for the provision of universal service throughout the nation at just, reasonable, and affordable rates. It must stay true to the previously delineated universal service principles of affordability; access to advanced services; comparability of rural and urban rates; equitable and nondiscriminatory contributions to high-cost support; specific, predictable, and sufficient funding, and competitive neutrality. It must not be distracted in its duties by those who wish to use this proceeding as a forum for access reform, pricing reform, eligible telecommunications carrier reform, or other similar matters.

In our reply comments, we highlight the following points:

- The size of the fund should have no bearing on the definition of the comparability of rates. The Commission should determine the comparability issue, and if the Commission finds that the fund is too large to be supported or sustained, further examination should be made.

- Affordability is a critical matter when determining the sufficiency of the fund. While we believe that affordability, rate comparability, and fund sufficiency are all related, and are all important, we believe that the driving force for determining the adequacy and competency of a fund is whether it maintains rates that customers find to be affordable.

- There is no one right or wrong benchmark for determining high cost support, and several options presented to the Commission are worthy of further explanation. However, any benchmark chosen should recognize some states' inability to adequately fund intrastate comparability.

- Any state inducement offered by the Commission must retain the principle of competitive neutrality and the movement of markets to a competitive status. Any inducement adopted should also recognize the existence of already functioning state universal service programs.

- The preservation and advancement of universal service should continue to be a partnership between state and federal regulators, where we work together, such that the federal program is not considered to be merely a backstop to state universal service funding.

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Introduction

The Wyoming Public Service Commission ("WPSC") hereby submits its Reply Comments in response to the Federal Communications Commission's ("Commission") Notice of Proposed Rulemaking ("NPRM") seeking comment on the issues from the Ninth Report and Order remanded by the United States Court of Appeals for the Tenth Circuit. The WPSC is the agency of the State of Wyoming that has jurisdiction to regulate, *inter alia*, intrastate telecommunications companies serving in Wyoming. As such, the WPSC is an interested party in this proceeding. Additionally, the WPSC has been a full and active participant in federal universal service issues over the past several years. The WPSC also filed a Notice of Rejoinder in Qwest's brief filed before the United States Court of Appeals for the Tenth Circuit in the proceeding that underlies the Commission's issuance of this NPRM, showing its continued interest in matters related to federal universal service.

Reasonable Comparability

In its NPRM, the Commission seeks comments on how it should define the term reasonably comparable for the purpose of achieving reasonable comparability of rates. Specifically, the Commission seeks comments on what should be compared relative to the urban-rural comparison referenced in Section 254(b)(c) of the 1996 Telecommunications Act. Additionally, the Commission seeks comment on what a fair range of rates would be to determine whether rates are reasonably comparable.

The Rural State Commissions[1] have proposed a reasonably comparable standard such that rural rates are not more than 125 percent of a suitably defined average urban rate. While we do not oppose such a standard, we realize, as did the Rural State Commissions, that adoption of this standard would have profound effects on universal service. As delineated at page 12 of the comments of the Rural State Commissions, "this means that if the rate or cost of serving an urban customer is $20, then no rural customer would have a rate cost (net of federal support) greater than $25.00." Clearly, we believe this to be a reasonable standard, but one that is

[1] Comments on Notice of Proposed Rulemaking by Maine Public Service Commission, Montana Public Service Commission, and Vermont Public Service Board, in CC Docket No. 96-45, filed April 10, 2002.

significantly different than the current standard.[2] However, we do not believe that the size of the fund, or the change in the size of the fund from its current level, should have any bearing on the definition of the comparability of rates. The Commission should determine the comparability issue, and if the Commission then finds that the fund is too large to be supported or sustained, further examination should be made.

As have many of the other parties, the WPSC suggests that comparability requires an examination of a reasonable range of rates, rather than the precise equating of rates. We do not take exception to comparing the cost of service rather than specific prices, since we have taken the step of making our local rates cost-based, rather than continuing an era of subsidizing rates with implicit subsidies. (We encourage other states to do the same, while stopping short of suggesting that the Commission mandate such a step.) However, any distinction between intrastate urban and rural comparisons, and interstate (or national) urban and rural comparisons is not a legislative or Congressional distinction, and must be well supported. In Wyoming, it is difficult to find a true urban area by which one can compare urban and rural rates. Is it reasonable to compare very rural areas with quasi-rural areas (such as Cheyenne or Casper) when our population relies heavily on yet-larger cities just over the Wyoming border (e.g., Salt Lake City or Denver or Billings)? We are concerned that making an interstate/intrastate distinction may be artificial for a state such as Wyoming, an extremely low-density, high-cost state with few, if any, true urban areas.

Sufficiency of the Fund

The Commission seeks comment on what it means for federal support for universal service to be sufficient. Among other specific questions, the NPRM seeks comment on what weight should be given to each of the universal service principles listed in Section 254(b) of the 1996 Telecommunications Act. The Commission also asks for comments on whether sufficiency should be determined by considering federal support only, or the total support provided by federal and state universal service funds.

In its comments, the United States Telecom Association ("USTA") offers a simple definition of sufficiency: "USTA believes that sufficient federal support is that level of high cost support that guarantees the availability of affordable local voice service to high-cost customers."[3] The WPSC endorses this simply stated concept of affordability. While many comments in this proceeding, and over the past years, have focused on the size of the federal fund, few have focused on the size of the customer's bill. Some comments focus on the size of the surcharge imposed on customers by carriers.[4] Some focus on the total dollar amount of support or the

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[2] In its Ninth Report and Order in CC Docket No. 96-45, adopted October 21, 1999, at page 37, the Commission indicated that the national average cost per line generated by the model was $23.836. The federal mechanism provides support based on this average rate of $23.84 multiplied by 135%, or a level of about $32.18 with the understanding that the federal jurisdiction provides 76% of the difference between the $32.18 and the computed forward looking cost. These costs are then aggregated to the state level for the support computation.

[3] Comments of the United States Telecom Association in CC Docket No. 96-45, filed April 10, 2002, at page 3.

[4] Comments of Verizon in CC Docket No. 96-45, filed April 10, 2002, at page 6.

support per line.[5] We wish to focus not on surcharges or percentages, but on customers. We remind the Commission that the first universal service principle mandated by Congress is that "Quality services should be available at just, reasonable, and affordable rates." It is following this concept of affordability that Congress discusses reasonable comparability and sufficiency. While we believe that affordability, rate comparability and fund sufficiency are all related, and all are important, we believe that the driving force for determining the adequacy and competency of a fund is whether it maintains rates that customers find to be affordable.[6]

While the WPSC has always believed that affordability was an important part of the universal service fund principles, it is now becoming even more critical as access reform and other interstate pricing reforms occur. As the WPSC has continually indicated before the Commission, a customer's local service rate is only a portion of the total bill that a local service customer incurs, even without any toll charges or vertical services. For the past few years, we had estimated that a customer's bill is $7 to $10 higher than its local service rate would indicate, when taxes (e.g., franchise taxes, sales taxes, other) and surcharges (the subscriber line charge, universal service fees, 9-1-1 charges, etc.) are added. This amount is continuing to increase with access reform converting volumetric charges to flat charges, which are then added to the customer's bill.[7] Where a customer could previously avoid or limit some of these charges through limiting or eliminating toll usage (e.g., where access rates were reflected in toll rates), that same customer is now required to pay the increased surcharge, regardless of whether any interstate services are used. All of this must be considered when examining the issue of affordability. This also makes the point that preservation and advancement of universal service must be a joint effort of federal and state regulators, since it is becoming difficult for the customer to distinguish intrastate charges from interstate charges.

While endorsing the USTA definition of sufficiency, we encourage the Commission to consider expanding the definition beyond only local voice services. The WPSC reminds the Commission that the universal service fund principles also include a desire to provide access to advanced and information services to both rural and urban areas of the United States of America. While we believe it would be unreasonable to ask the federal support mechanisms to support the provision of advanced services to all customers nationwide, we do endorse the recommendation of the Rural Task Force where it recommended that the fund be sized to include *access to*

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5 Comments of Qwest Communications International Inc. in Response to the Tenth Circuit Remand in CC Docket No. 96-45, filed April 10, 2002, at page 20.

6 The need to focus on affordability is also stressed in the Comments of General Communication, Inc. in CC Docket No. 96-45, filed April 10, 2002. At page 5, General Communication, Inc states: "The term 'affordable,' like the terms 'reasonable comparable' and 'sufficient,' is not defined with sufficient precision ' in a way that can be reasonably related to the statutory principles.' [Footnote omitted.] Only by addressing and further defining what it means for services to be 'affordable' will the Commission fulfill the court's directive with respect to defining key statutory terms and be able to claim plausibly that it balanced all the principles set forth in Section 254(b) in establishing its universal service policies."

7 For example, basic residential subscriber line charges have increased from $3.50 to $5.00 and are continuing to increase.

advanced services and *no barriers to investment in plant needed to provide access to advanced services.*[8]

The Rural State Commissions commented that the Commission should not give any weight to the goal of reducing the size of the fund.[9] We wholeheartedly agree as expressed above in our discussion of rate comparability. Under the federal Act, high-cost customers of non-rural areas are entitled to the support necessary to maintain affordable rates, regardless of whether they are customers of rural or non-rural carriers.

The NPRM posed the question of whether only federal funds should be considered when examining sufficiency, or whether it should include a joint examination of federal and state high cost support. The WPSC urges the Commission to consider both federal and state funding when looking at fund sufficiency. However, this examination should be conducted in a manner that does not consider the federal support only a backstop to the state funding. Rather, the partnership arrangement is critical: both the state and federal funds should contribute to maintaining affordable customer rates.

Level of Support Benchmark

The NRPM seeks comment on whether it should adopt a different benchmark(s) or whether it should continue to use the 135 percent benchmark previously adopted. The Commission also seeks comments on the desirability of a step approach to high-cost support and how any such graduated support system would function. The Commission also seeks comment on whether it should continue to use a benchmark based on nationwide average costs compared to statewide average costs, and whether continuation of such a comparison would violate the comparability principles of universal service.

SBC Communications Inc. opines that the benchmark should be revisited using a completely different approach than the current use of a percentage of the costs defined by a forward-looking cost model. Rather, SBC begins with the concept of affordability as a "rate ceiling above which explicit universal service support should be made available for cost recovery purposes."[10] SBC suggests that the affordability benchmark would be defined based on the median household income of a particular geographic region (e.g., a county). Support would then be provided above the affordability benchmark, for example, where the benchmark would be established as a percentage of the geographic median household income.[11] Combined federal and state support would make up the difference between the affordability benchmark and the

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8 Rural Task Force Recommendation to the Federal-State Joint Board on Universal Service, Released September 29, 2000, pages 23-24. While we realize the Rural Task Force was not making recommendations relative to the support for non-rural carriers, we believe that this portion of their recommendation is relevant for both rural and non-rural carriers and the support received by those carriers.

9 Comments of the Rural State Commissions in CC Docket No. 96-45, filed April 10, 2002, at page 13.

10 Comments of SBC Communications Inc. in CC Docket No. 96-45, filed April 10, 2002, at page 21.

11 Comments of SBC Communications Inc. in CC Docket No. 96-45, filed April 10, 2002 at page 15.

forward-looking cost of service for a geographic area. The final portion of SBC's plan would have the Commission establish a transition plan that allows residential local prices to rise to levels that are self-supporting and affordable.

The WPSC finds portions of SBC's plan to be intriguing and worthy of further investigation while other portions of the plan override any state authority or jurisdiction of state retail rates and should be immediately rejected. We appreciate SBC's focus on affordability and its proposal to make affordability a key factor in determining the level of federal funding. Of course, we are not prepared to wholeheartedly endorse a plan without additional specifics, such as the percentage to be applied to household income, whether we are looking at household or per capita income, and other factors.[12] We believe this concept may be worthy of further discussion and analysis. For instance, it would be interesting to determine whether there is a correlation between average income and average cost within a geographic area (or between income and density or any other traditional cost driver.) We are not, however, supportive of any proposal that would allow the Commission to usurp the role of the states and take rule of local service providers' retail rates. While we agree with SBC that retail local service rates should be rational and sustainable, we continue to believe that the state commissions are best able to determine the reasonable and sustainable levels for retail rates. Any role the Commission takes in the establishment of retail rates should be limited to establishing conditions or limitations relative to the receipt of federal high cost funding. If a state chooses to ignore these conditions and forego federal support, that is its decision and the Commission should have no additional authority to modify retail rates.

One proposal that the WPSC has offered in past comments[13], and re-offers here, is the concept of maintaining the 135% of nationwide (or urban) computed forward-looking costs as the benchmark, but not then averaging the individual wire center results into a study area or, as it works for Wyoming, a statewide average. We suggest that if the Commission were to readopt its current benchmark and associated computation, that this would pass the affordability, sufficiency, and comparability standards *if the Commission provided support at the wire center level instead of the study area level.* We refer you to our previous filing, still pending before the Commission, which provides the quantitative analysis of how support at a wire center basis would allow for adequate support for Wyoming customers. As noted in this earlier filing, Wyoming's rates would continue to be substantially higher than the national average residential rate, but this proposed option would allow for the federal support to be directed to the high cost areas while also recognizing some limitations on Wyoming's ability to provide intrastate urban and rural rate comparability without some additional support from the federal high cost fund.

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[12] For example, if one assumed average household income of $25,000 and an applicable percentage of 2%, support would not be provided until prices exceeded $41.67 per month. We find this benchmark level to be too high based on our experience with customers and prior affordability studies. In fact, our current state and federal threshold for support is in the $35 range, which is pushing customers limits of affordability, when taxes and surcharges are added to the local service rate.

[13] WPSC Petition for Reconsideration of the Ninth Report & Order and Eighteenth Order on Reconsideration in CC Docket No. 96-45, filed December 30, 1999, beginning at page 5. The discussion begins, "For Wyoming customers, the most devastating portion of the Commission's *Ninth Report and Order* is the decision to average costs across the study area, rather than providing support at the wire center level." We continue to believe this is a significant problem with the Commission's funding mechanism.

State Inducements

In its NPRM, the Commission seeks comment on how it should induce states to implement mechanisms to support universal service, and more specifically, what kind of state action should be required, and how states should be induced to implement universal service support mechanism, whether or not the state receives federal universal service support. Several of the commenters have used this discussion on inducement as an opportunity to simply propose restrictions on the states actions, whether or not those state actions relate to the federal-state universal service partnership, and to advance their own personal agendas. The Commission should carefully examine these proposals and reject those that do not further the cause of advancing and maintaining universal service and the affordability of that universal service. Further, the Commission should focus only on those proposals that balance all of the universal service principles including the principles of: just, reasonable, and affordable rates; access to advanced services; urban and rural rate comparability; equitable and nondiscriminatory funding of the support mechanisms; specific and predictable support mechanism; and competitive neutrality.

The Competitive Universal Service Coalition's comments urge inducements that focus on the designation of ETCs in a competitively and technologically neutral manner. While the WPSC has been very pro-competitive in its pricing and universal service actions, and generally embrace pro-competitive stances, we are concerned about the specific eligible telecommunications carrier proposals offered in this proceeding. Specifically, it has been proposed that states "should be required to use the same, minimal standards – tracking those adopted by this Commission – for both federal and state ETC designation."[14] Adoption of such a proposal would not constitute an inducement of a federal-state partnership for universal service, but would be a usurping of state authority relative to its state universal service funding. Section 254 of the 1996 Telecommunications Act permits the terms and conditions of state universal service funds to vary from the federal support requirements as long as an additional burden is not placed on the federal fund.[15] Wyoming legislation calls for competitively neutral support to be provided by the state universal service fund, and the WPSC is in the process of continuing to review matters related to implementation of these competitively neutral requirements. Simply because support is provided to carriers – whether they be wireless or wireline, or incumbent or competitive – on a different basis than used by the Commission, it is not an automatic indication that the support mechanism is competitively or technologically flawed. State programs are designed to meet a variety of needs that fit a variety of circumstances, and must not be limited to a specific set of design characteristics. We agree that there is a need for a partnership between state and federal programs, but find that this partnership must not be confined by a one-size-fits-all mentality.

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[14] Comments of the Competitive Universal Service Commission in CC Docket No. 96-45, filed April 10, 2002, at page 12.

[15] Section 254(f) concludes: ". . .A State may adopt regulations to provide for additional definitions and standards to preserve and advance universal service within that State only to the extent that such regulations adopt additional specific, predictable, and sufficient mechanisms to support such definitions or standards that do not rely on or burden Federal universal service support mechanisms."

Interestingly, BellSouth Corporation's comments also want to limit states' actions as part of their proposed inducement to states, but the proposal may have the impact of actually stifling the competitive environment, rather than allowing it to blossom. We read BellSouth's comments to endorse some level of continuing implicit subsidies as part of intrastate rates, although the WPSC has endeavored to eliminate implicit subsidies over the past few years in order to allow competition to foster. BellSouth advocates a two-pronged state inducement: first, the state would have to permit carriers to reduce intrastate switched access rates to parity with interstate switched access rates in a revenue neutral fashion; and second, the state would have to implement a plan that makes urban and rural rates comparable by setting rural rates at a level that is no greater than 110 percent of the urban rate but no less than the urban rate.[16] The WPSC believes that such a restriction could cause the continuation of implicit, intrastate subsidies, since this may not allow specific rates to reach their true forward-looking cost. For example, Qwest has forward-looking cost-based rates in Wyoming ranging from $23.10 for the most urban zones to $69.35 for its most rural zones, prior to the application of any federal or state support – a threefold spread. On a net basis, after application of the current federal and state support levels, the urban and rural (zone three) residential rates are $23.10 and $33.63 respectively. This continues to be a difference of more than 110%, the maximum spread suggested by BellSouth. If BellSouth's state inducement were adopted, Qwest would have to reduce its rural rates and increase its urban rates in order to receive federal universal service – an action contrary to that which is advocated by each supplier currently advocating the creation of a competitive environment and an action in violation of the Commission's adopted principle of competitive neutrality.[17]

Verizon offers a similar proposal that would also have disastrous results for Qwest's Wyoming ratepayers. Verizon suggests that in order to receive non-rural high-cost support, a state must show either "(1) that its rates in urban and rural areas are within two standard deviations of each other (using the standard deviation for nationwide rates, or $11); or (2) that its rates in rural areas are within two standard deviations of the nationwide average urban rate."[18] As noted above, the approved rates for Qwest's Wyoming operations, which are founded in forward-looking cost computations, would fail this test.[19] The failure of this test would occur – not *in spite of* competitive neutrality and the removal of implicit subsidies – but directly *as a result* of Wyoming's desire to create a competitive telecommunications market. Thus, while being one of the first states in the nation to set local rates based on forward-looking costs with an eye toward a competitive market, Verizon would deny us the explicit support that comes from our actions of reducing access charges and allowing local rates to recover their costs. Verizon's

[16] Comments of BellSouth Corporation in CC Docket No. 96-45, filed April 10, 2002, at page 4.

[17] First Report and Order in CC Docket No. 96-45, adopted May 7, 1997, paragraphs 46-48.

[18] Comments of Verizon in CC Docket No. 96-45, filed April 10, 2002, at page 11.

[19] The Comments of Verizon in CC Docket No. 96-45, filed April 10, 2002, at pages 4 and 5 show that the mean residential rate for urban areas is $14.79 and the mean single-line business rate for urban areas is $33.49. The comments continue with the indication that urban residential rate standard deviation and the business rate standard deviation are $5.31 and $8.83 respectively. As indicated above, the spread between Qwest's most urban and most rural residential rate is more than 30%, failing Verizon's proposed test to qualify for federal universal service support.

proposal should clearly be rejected as being anti-competitive and inconsistent with universal service principles established by the Commission.

The Public Utility Commission of Texas requests that "states with viable universal service support mechanisms, such as Texas, should be exempt from such requirements," referring to inducements for the implementation of universal service mechanisms.[20] While the WPSC agrees with Texas that inducements are unnecessary for the states with functioning state universal service programs, we do not believe that the appropriate action is the creation of and then an exemption from dictatorial requirements such as those proposed to be imposed on the states (such as those described above). Rather, we believe that any inducements should recognize the variety of state funding mechanisms already in place. Any inducements should be flexible regarding the existing state programs and should work with and build upon the state programs, rather than completely usurping the states. Wyoming, like Texas, has a functioning and viable state mechanism, that should be recognized, but not changed, when establishing the parameter of the federal fund.

We believe that a flexible partnership would also allow the Commission to incorporate some version of a sliding or graduated support system, as proposed by Qwest, based on the state's "ability to subsidize rate reasonably comparable to the national norm."[21] While states that are able to provide comparable (yet competitively based) rates *may* need some incentive or inducement to provide state support in lieu of federal support, there are states, such as Wyoming, who are unable on their own to support rates at affordable levels. These high cost states are simply unable to provide adequate support from their own funds and must have a federal-state partnership arrangement to maintain universal service rates for their citizens.

Respectfully submitted,

STEVE ELLENBECKER Chairman	STEVE FURTNEY Deputy Chairman	KRISTIN LEE Commissioner

[20] Comments of the Public Utility Commission of Texas, CC Docket No. 96-45, filed April 5, 2002, at page 3.

[21] Comments of Qwest Communications International Inc. in Response to the Tenth Circuit Remand, CC Docket No. 96-45, filed April 10, 2002, at page 13.